

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

JOEL GOLDMAN,

Plaintiff,

Case No. 1:05CV0035
Honorable Richard Alan Enslen

v.

HEALTHCARE MANAGEMENT
SYSTEMS, INC. and
THOMAS E. GIVENS,

Defendants.

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**RESPONSE OF HEALTHCARE MANAGEMENT SYSTEMS, INC.,
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant Healthcare Management Systems, Inc. ("HMS"), by and through undersigned counsel, respectfully submits this Response to the First Set of Interrogatories filed by the Plaintiff in this matter. Initially, HMS objects to answering these Interrogatories for the following reasons:

First, HMS objects to the language used in connection with these Interrogatories to the extent that the wording is overly broad, vague and may be inconsistent with normal usage and meaning of such words so as to constitute an unreasonable expansion of the Interrogatories themselves. HMS gives notice that it shall answer the Interrogatories in a manner consistent with its understanding and usage of the language used in the Interrogatories and to the extent necessary to fairly and fully answer the Interrogatories pursuant to the Federal Rules of Civil Procedure.

Second, HMS objects to responding to any of these Interrogatories which may seek material prepared by counsel in anticipation of litigation. This material is non-discoverable as confidential attorney work product. Further, HMS objects to answering these Interrogatories to the extent that the information may consist of confidential attorney-client communications. HMS, therefore, asserts the attorney work product doctrine and attorney-client privilege.

Third, HMS objects to the Interrogatories seeking information which is already in the custody of the Plaintiff. To the extent that the Plaintiff is seeking such information which it already has in its possession, HMS objects to these Interrogatories as an effort by the Plaintiff to harass, vex, and oppress HMS.

Fourth, HMS objects to each Interrogatory as the information requested is not relevant to this lawsuit and is not likely to result in the discovery of information.

Finally, in answering these Interrogatories, HMS does not waive any objections based on lack of authenticity or hearsay to the materials contained in these Interrogatories and any materials produced pursuant to them. HMS is producing this material in a spirit of cooperation, but HMS does not waive any evidentiary objections to the materials contained herein.

HMS objects to these Interrogatories as a whole on the above grounds. In order to avoid repetition, HMS hereby incorporates these objections in each of the responses set forth below as if the objections were set forth in their entirety in each response.

Subject to these objections and the objections more particularly set forth below, HMS states as follows.

1. Provide herein the name, business address and customer contact person for all purchasers or licensees located in the State of Michigan of any HMS software, product or service from 1983 to the date hereof.

ANSWER:

“Because each act of infringement is a distinct harm, the statute of limitations bars infringement claims that accrued more than three years before suit was filed” Bridgeport Music, Inc. v. Diamond Time, Ltd., 371 F.3d 883, 889 (6th Cir. 2004). See also Hoste v. Radio Corp. of America, 654 F.2d 11, 11 (6th Cir. 1981). Subject to the provisions of the Protective Order entered by this Court on May 17, 2005, HMS submits the following information for the past three years:

Hills and Dales General Hospital
4675 Hill Street
Cass City MI 48726

McKenzie Memorial Hospital
120 N. Delaware Street
Sandusky, MI 48471

2. For each purchasers or licensee identified in no. 1 above, identify the product or service acquired from HMS.

ANSWER:

“Because each act of infringement is a distinct harm, the statute of limitations bars infringement claims that accrued more than three years before suit was filed ” Bridgeport Music, Inc. v. Diamond Time, Ltd., 371 F.3d 883, 889 (6th Cir. 2004). See also Hoste v. Radio Corp. of America, 654 F.2d 11, 11 (6th Cir. 1981). Subject to the provisions of the Protective Order entered by this Court on May 17, 2005, HMS submits the following information for the past three years:

During the past three (3) years, HMS has provided technical and software support services to these customers.

3. Provide herein the name, business address and customer contact person for all purchasers or licensees from HMS of the Software at Issue from 1983 to the date hereof.

ANSWER:

“Because each act of infringement is a distinct harm, the statute of limitations bars infringement claims that accrued more than three years before suit was filed ” Bridgeport Music, Inc. v. Diamond Time, Ltd., 371 F.3d 883, 889 (6th Cir. 2004). See also Hoste v. Radio Corp. of America, 654 F.2d 11, 11 (6th Cir. 1981). Further, HMS objects as overly broad and unduly burdensome as the request is onerous, burdensome, harassing, prejudicial and overly broad. Each request asking "any" and "all" or "each and every" is objectionable in that such an inquiry, in essence, is a request for evidence, and not discoverable information. See, e.g., United States v. Renault, Inc., 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). HMS did not exist in 1983, thus it

is unaware of such records. Further, HMS is unclear as to what "Software at Issue" is defined to include.

4. Provide herein HMS annual sales by year for each purchaser or licensee identified in no. 3, above, for all sales to those purchasers or licensees, including but not limited to sales of the Software at Issue, from 1983 to the date hereof.

ANSWER:

"Because each act of infringement is a distinct harm, the statute of limitations bars infringement claims that accrued more than three years before suit was filed " Bridgeport Music, Inc. v. Diamond Time, Ltd., 371 F.3d 883, 889 (6th Cir. 2004). See also Hoste v. Radio Corp. of America, 654 F.2d 11, 11 (6th Cir. 1981). Further, HMS objects as overly broad and unduly burdensome as the request is onerous, burdensome, harassing, prejudicial and overly broad. Each request asking "any" and "all" or "each and every" is objectionable in that such an inquiry, in essence, is a request for evidence, and not discoverable information. See, e.g., United States v. Renault, Inc., 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). See Response to No. 3.

5. Provide herein HMS annual sales by year for each purchaser identified in no. 3, above, for sales of the Software at Issue, or its constituent modules, from 1983 to the date hereof.

ANSWER:

See Response to No. 3 and No. 4.

6. Does HMS presently employ Annita Milkwick? If employed by HMS, provide her current business address and title. If not employed provide her last known address and telephone number(s).

ANSWER:

HMS does not presently employ Ms. Milkwick. Ms. Milkwick's last known place of employment was ComTech Business Consultants, Inc., 3855 Oakview Drive, Powder Springs, GA 30127-2233.

7. Identify by name, provide present employment status with HMS and if not presently employed by HMS provide the last known address(es) and telephone number(s) for each person that participated in the design, programming or implementation of the Software at Issue, from 1983 to date hereof.

ANSWER:

HMS objects to this Interrogatory as HMS has had over 600 employees since its organization and incorporation. During this period of time, at least 300 of these employees would have participated in some facet of the design, programming or implementation of the HMS proprietary software. Further, HMS is unclear as to what "Software at Issue" is defined to include. Subject to the foregoing, HMS states that employees of HMS who participated in the design, programming or implementation of HMS' proprietary software include Thomas E. Givens and Sheryl Roose. Both Mr. Givens and Ms. Roose are currently employed by HMS.

Dated: September 23, 2005

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CERTIFICATE OF SERVICE

This is to certify that on September 23, 2005, a true and correct copy of the foregoing was electronically filed and served upon the following:

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this the 23rd day of September, 2005.

Keith C. Dennen